WP(C) 7423/2003
BEFORE
HON'BLE JUSTICE RANJAN GOGOI

JUDGMENT & ORDER (Oral)

1. All the three writ petitions having raised more or less common questions of law, on largely identical facts, were heard together and are being disposed of by this common judgment and order.

2. The 5 (five) petitioners i.e. (1) Sri Sankar Das, (2) Sri Krishnendu Purkayastha, (3) Mrs. Saswati Sen, (4) Sri Suraj Bhattacharjee, and (5) Sri Bimal Barman have joined together to contend that the promotions conferred to the Respondent Nos.4 to 26 in W.P.(C) No.7423 of 2003 is untenable in law and that instead promotions should have been conferred to the petitioners. The promotional post in question is that of Junior Telecom Officer and the post held by the petitioners is Telecom Office Assistant. It may also be noticed at this stage that the petitioner Nos.1 and 5 are scheduled caste candidates whereas the petitioner Nos. 2, 3 and 4 are general category candidates. The relevant facts may now be briefly noticed.

3. Under the norms in force and in terms of the promotion policy in the BSNL there is a 15% quota for promotion to the post of Junior Telecom Officer from Telecom Office Assistants. The selection for promotion is required to be made on the basis of a competitive examination wherein a candidate belonging to the open category has to secure 40% marks in each paper whereas a reserved category candidate is required to obtain 33% marks in each paper. All the petitioners tested with reference to the aforesaid norms failed to qualify. This was in an examination held in the year 1999. There was a further examination of the year 2000 which was held on 14/5th July 2001. In the said examination the petitioners did not appear whereas the respondent Nos.4 to 26 did. The said respondents, however, did not qualify in the examination held on the basis of the norms as noticed above.

4. A large number of posts of Junior Telecom Officer, i.e. 23 to be precise that were required to be filled up by promotion by application of the above norms could not be filled up due to dearth of eligible candidates. Representations were, therefore, received from different quarters for relaxation of the qualifying marks in the selection test. After due examination, the Govt. of India issued a Circular dated 10th of March 2003 by which it was clarified that the requirement of obtaining a particular percentage of marks in each paper is being dispensed with and the percentage of marks required to be secured will be in the aggregate. Secondly, the requirement of 40% marks for general category candidates was lowered to 30% and the 33% marks required for reserved category candidates was lowered to 20%. However by the circular dated 10.3.2003 it was made clear that in view of an Office Memorandum dated 22.7.1997 issued by the Department pursuant to a judgment of the Apex Court and till the time of amendment of Article 335 of the Constitution and publication of the consequential Notification dated 3rd of October 2000, the two different standards prescribed for general and reserved category candidates will not apply between 27th July 1997(sic) and 3rd of October 2000 and that during the said period a uniform standard of 30% marks, in the aggregate, will be applicable to all categories of candidates. In other words, the relaxed standard of 30% marks for general category candidate and 20% marks for reserved category candidates was made applicable by the Circular dated 10.3.2003, after 3rd of October 2000 i.e. the date of the notification published after amendment of Article 335 by insertion of the provision thereto. By the Office Memorandum dated 10th of March 2003 it was also made clear that the relaxed standard, as prescribed, will be applied to either of the two examinations i.e. the examination held in the year 1999 or in the year 2000 whichever was later . It was

thus made clear that the relaxed standards will not apply to both the examinations.

5. As already noticed, the petitioners appeared in the examination held in the year 1999 but did not appear in the examination of the year 2000 which was held in July 2001. In the examination held in the year 1999 the petitioners did not qualify, though it has been the contention of the 1st and the 5th petitioners that they had qualified in the said examination, an aspect of the case that will be dealt later. The respondent Nos.4 to 26, however, appeared in the later examination i.e. of the year 2000 held in 2001. They also did not qualify in terms of the requirement of marks laid down prior to the relaxed standards prescribed by the Circular dated 10.3.2003. In the above circumstances, the question arose as to whether the benefit of the relaxed standards should be applied to the examination held in the year 1999 or to the examination of the year 2000 held in the year 2001. Accordingly, a clarification was sought from the higher authority by letter dated 2.5.2003 as to which examination the relaxed standards should be applied. In reply, the higher authority by communication dated 22.7.2003 took the view that the examination of the year 2000 though held in the year 200, being later in point of time, the benefit of the relaxed standards prescribed by the Circular dated 10.3.2003 should be made applicable to the said examination held in the year 2001. As the petitioners did not appear in the examination held in the year 2001 their cases could not be considered and the respondent Nos.4 to 26 who had appeared in the said examination were given the benefit of the relaxed standards as prescribed and thereafter promotion was granted to the said respondents in accordance with the further norms in force. It is the validity of the aforesaid action of the respondents that has confronted the Court in the writ petitions on the contentions advanced.

6. Before proceeding to embark upon the requisite discussion of the main issue in the cases under consideration, as identified above, the Court may have to deal with the stand taken by the 1st and the 5th petitioners that in the examination held in the year 1999 where they had participated, they had qualified by virtue of the norms applicable to scheduled caste candidates. The said norms in force, as already noted, are to the effect that such candidates must secure 33% marks in each subject.

7. The prescription of two different standard of marks for general and reserved category candidates for purpose of promotion as visualized by the norms in force in the department came to be frowned upon by the Apex Court in the case of S. Vinod Kumar [(1996)6 SCC 580] by taking the view that two different standards of eligibility for general and reserved category candidates will not be permissible. Following the aforesaid judgment of the Apex Court the department had to issue an Office Memorandum dated 22.7.1997 departing from the earlier laid down norms and prescribing a uniform standard of 40% marks for both categories of candidates i.e. general and reserved. The aforesaid law laid down by the Apex Court continued to hold the field until the amendment of Article 335 of the Constitution was made by inserting a proviso which permitted such different standards to be laid down. Accordingly, the uniform prescription of 40% marks for both categories of candidates continued to hold the field at the time when the 1999 examinations were held. In the said examination both the petitioners, i.e. 1st and 5th, had failed to secure 40% marks in each of the papers. As the said requirement was mandatory at the time of the 1999 examination the petitioners in question must be understood to have been rightly disqualified on the basis of their results of the 1999 examination.

8. Notwithstanding the above, the petitioners would still be qualified in terms of the relaxed standards provided by the Circular dated 10.3.2003 if such relaxed standards can be held applicable to the 1999 examination. This is the moot question that calls for a decision in the present case.

9. The details of the Circular dated 10th of March 2003 have already been noticed. The relaxed standards prescribed by the said Circular is to apply to the examination held in the year 1999 or in the year 2000, whichever is later but not to both the examinations. The question, therefore, that has to be determined is the intention behind the Circular dated 10.3.2003. Was it intended to apply to the examination of a particular year held subsequently or to the examinations actually held in the year mentioned?

10. If the intention behind the Circular dated 10.3.2003 was to confer the benefit in respect of examination of a particular year regardless of when the examination was held, nothing would have been easier for the authority to express such an intention by use of the words examination of the year 1999 in stead of the words actually used examination held in the year 1999 . The use of the aforesaid later words in the office Circular indicates that the real intention behind the office Circular was to give benefit to the examinations held in a particular year and not to the examinations of a particular year which were held subsequently. The above intention behind the Circular dated 10.3.2003 is also apparent from another significant fact which may now be noted. Examinations of the year 2000, in so far as the Assam Circle is concerned, was not held in the said year. It was held subsequently in July 2001. The said examination of the year 2000 of all other Circles were, however, held in the year 2000. This is a fact that the department must have known when the Circular dated 10.3.2003 was issued. In that event, if the intention of the authority was to apply the Circular to the examinations of the year 2000 which was to their knowledge held in the year 2001 the expression that would have found mention in the Circular dated 10.3.2003 is examination of the year 2000 and not examination held in the year 2000 . The above discussions, therefore, would reasonably lead to the conclusion that the real intention behind the office Circular dated 10.3.2003 was to confer benefit of the relaxed standards to the examinations held in a particular year. The said office Circular having prescribed that the said relaxed standards would be applied to the examinations held in the year 1999 or in the year 2000 whichever is later and no examination having been held in the year 2000 the Court must hold that it is the examination held in the year 1999 which should have been covered by the relaxed standards laid down by the Circular dated 10.3.2003.

11. In the present case the same was not done. Rather, the Circular was applied to the examination of the year 2000 held in the year 2001. This, the Court must hold, was not correct and that the respondents should have applied the Circular to the examination held in the year 1999.

12. This will bring the Court to a consideration of the relief(s) that the petitioners will be entitled to.

There is no dispute on the fact that after qualifying in the selection on the basis of the minimum marks prescribed, promotion has to be conferred on the basis of the inter se merit amongst the qualified candidates. How many of the respondents who were promoted by application of the relaxed standards to the examination held in 2001 had also appeared in the 1999 examination; what was their performance in the 1999 examination, both in terms of eligibility and inter se merit vis- -vis themselves as well as the petitioners are facts that are not available before the Court. It is only on a consideration of the said facts that the extent and quantum of the final relief due to the petitioners can be determined. In such circumstances, the order that will be justified in the facts of the present case is a direction to the respondents to now apply the relaxed standards prescribed by the office Circular dated 10.3.2003 i.e. 30% uniform marks for both categories of candidates to the examination of the year 1999 and on that basis to determine the entitlement of the persons who would be eligible for promotion to the vacancies that existed at that point of time which are stated to be 23 in number. Thereafter, if any of the respondent Nos.4 to 26 are found not to be entitled to their promotional posts orders will be passed by the respondents to the above effect. Similarly, if on the aforesaid determination, any of the petiti

oners are found to be entitled to promotion against the 23 vacant posts of Junio r Telecom Officer, promotion will be granted to the said petitioners on that bas is. The exercise as directed above will be completed by the respondents within a period of three months from the date of receipt of a copy of this order or a ce rtified copy thereof.

13. Before parting with the records, the court would like to add that this o rder has been passed exparte against the respondent Nos.4 to 26 who, though serv ed with requisite notices of the Court, had chosen to remain away from the prese nt proceedings.

14. Consequently and in the light of the foregoing discussions, all the thre e writ petitions are disposed of in terms of the directions contained above.